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Report of the Secretary-General on the protection of civilians in armed conflict

I. Introduction

1. The present report is submitted pursuant to the request contained in the statement of the President of the Security Council of 27 May 2008 (S/PRST/2008/18).

2. The year 2009 marks the tenth anniversary of the consideration by the Security Council of the protection of civilians in armed conflict as a thematic issue. As with most anniversaries, there is cause for celebration but also for a critical review of progress made. The protection of civilians has come to occupy a prominent place on the Council's agenda, as manifested in the biannual open debates and the Secretary-General's periodic reports. Most importantly, the protection of civilians has increasingly permeated the country-specific deliberations and decisions of the Council. This has resulted in concrete proposals and decisions intended to improve the situation of countless men, women, girls and boys affected by the horrors and indignities of war. It has also contributed to the increasing awareness among Member States and the broader international community of the need to respond to protection issues.

3. A decade ago, members of the Security Council questioned whether situations of internal armed conflict constituted a threat to international peace and security, and thus a matter for Council consideration. Currently, based on the experience of conflicts in such places as Afghanistan, Chad, the Central African Republic, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone, Somalia and the Sudan, the regional dimensions and destabilizing effects of internal conflicts have been firmly recognized and the Council is progressively more willing to address the protection needs of civilians in such situations.

4. Nonetheless, further efforts to strengthen the protection of civilians remain crucial. While the last 10 years have seen peace come to some of the world's major conflicts, others have continued to smolder and burn and new ones have broken out. Common to old and new ones alike are persistent and sometimes appalling levels of human suffering owing to the fundamental failure of parties to conflict to fully respect and ensure respect for their obligations to protect civilians. Actions on the ground have not yet matched the progress in words and the development of international norms and standards.

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5. This is a failure that demands a reinvigorated commitment by the Security Council, Member States and the United Nations to the protection of civilians and to the promotion of respect for the principles of international humanitarian law, human rights law and refugee law on which the concept is founded. In practical terms, it requires determined action to meet the five core challenges outlined in the present report: enhancing compliance by parties to conflict with international law, in particular in the conduct of hostilities; enhancing compliance with the law by non-State armed groups; enhancing protection through more effective and better resourced peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations of the law.

II. A decade of protection of civilians

6. On 12 February 1999, at the end of its first debate on the protection of civilians, the Security Council adopted a presidential statement expressing grave concern at the growing civilian toll of conflict (S/PRST/1999/6). It noted that civilians account for the vast majority of casualties and are increasingly directly targeted by combatants.

7. The statement also acknowledged the relevance of the issue to the Security Council. Noting that large-scale human suffering is both a consequence of and a contributing factor to instability and further conflict, and bearing in mind its primary responsibility for the maintenance of international peace and security, the Council affirmed the need for the international community to assist and protect civilians affected by conflict.

A. Ten years of normative progress

8. In the aforementioned statement of February 1999, the President, on behalf of the Security Council, requested my predecessor to submit a report with recommendations for improving the protection of civilians. To date, the Council has considered six such reports. These have raised a range of issues, reflecting the fact that improving the protection of civilians is not a purely humanitarian task; rather, it is a task that requires focus and action in the peacekeeping, human rights, rule of law, political, security, development and disarmament fields. The reports have also underlined the fact that improving the protection of individuals and communities is not a substitute for political processes aimed at preventing or ending conflict and building sustainable peace.

9. The six reports contain over 100 recommendations that address such issues as the ratification of international instruments, protection of specific groups, humanitarian access, sexual violence, impunity, small arms and the role of peacekeeping missions and regional organizations. Several of these issues were reflected in landmark Security Council resolutions on the protection of civilians (1265 (1999), 1296 (2000), 1674 (2006) and 1738 (2006)) as well as, albeit inconsistently, in an increasing number of situation-specific resolutions and peacekeeping mandates.

10. Some of these issues have been addressed also in the Security Council's work on women, peace and security and on children and armed conflict. In particular,

resolution 1820 (2008) signalled the Council's strengthened commitment to address sexual violence in conflict. The adoption of resolution 1612 (2005), the establishment of the Working Group on Children and Armed Conflict, and the work of my Special Representative on this issue, as well as the efforts of mandated agencies, their partners and the child protection components of peacekeeping missions, have all contributed to important advances in enhancing protection for children affected by conflict.

11. The Security Council has also adopted eight presidential statements on the protection of civilians. The annex to the most recent of these (S/PRST/2009/1) contains the third version of the aide-memoire adopted by the Council on the protection of civilians in armed conflict, which identifies key protection concerns in contemporary conflicts and, based on past practice, actions which the Council could take to respond.

12. Also in January, the Security Council Expert Group on the Protection of Civilians, whose establishment I recommended in my last report (S/2007/643) to mainstream protection into the Council's actions, was convened for the first time to discuss the situation in Côte d'Ivoire, before the renewal of the mandate of the United Nations peacekeeping operation in that country. It has since met two more times, in advance of the renewal of the mandates of the United Nations Assistance Mission in Afghanistan (UNAMA) and the United Nations Mission in the Sudan, and has contributed to further reflecting protection concerns in the respective Council resolutions.

13. The Expert Group provides an important forum for the Office for the Coordination of Humanitarian Affairs to informally brief the Security Council on behalf of the humanitarian community, with a view to ensuring that protection concerns are identified and addressed in the Council's resolutions and actions on specific situations. I would urge that the Council make extensive use of the Expert Group and, through it, give practical relevance to the aide-memoire and the wealth of experience and best practice developed over the last 10 years.

B. Enhancing protection on the ground

14. While such developments are an essential starting point, they are of limited value if they do not translate into concrete improvements in the protection of civilians on the ground, or contribute to efforts to this end by the various United Nations and other humanitarian and human rights organizations. The inclusion of protection activities in the mandates of peacekeeping missions, beginning with the United Nations Mission in Sierra Leone in 1999, is among the most significant of Security Council actions to this end. The requirements for the adequate implementation of such mandates are further discussed in section III of the present report.

15. Also within the peacekeeping context, the Security Council has taken important steps to improve protection for specific groups. Women and children were identified in the first Secretary-General's report as requiring special protection measures. These included ensuring that their needs are addressed by peacekeeping missions which, in turn, contributed to the deployment of gender and child protection advisers in several missions, reinforcing the work of mandated humanitarian agencies in the respective fields. Of particular note was the Council's

request, contained in its resolution 1794 (2007), that the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) pursue a Mission-wide strategy to address sexual violence. In March 2009, United Nations actors and their national and international partners finalized a comprehensive strategy to combat sexual violence. The strategy is crucial and warrants support from all concerned. Similar strategies should be developed in other contexts where sexual violence is widespread.

16. In addition to women and children, the Security Council has sought to enhance protection for refugees and internally displaced persons by mandating peacekeeping missions to protect camps and sites from armed attacks and to maintain their civilian and humanitarian character by supporting the disarmament and separation of combatants. The Council's endorsement of the Détachement intégré de sécurité to protect camps in Chad (resolution 1778 (2007)), following training by the United Nations Mission in the Central African Republic and Chad (MINURCAT), is noteworthy in this regard. Day and night patrols have been conducted since October 2008 and, as of April 2009, 81 individuals suspected of serious crimes have been arrested.

17. The Security Council has also promoted durable solutions for refugees and displaced persons that are safe, voluntary and dignified. Peacekeeping missions have been mandated to support the return of refugees and displaced persons, notably through the creation of secure environments and restoration of the rule of law. In Kosovo and Timor-Leste this contributed to the establishment of mechanisms to address housing, land and property issues. As noted in my last report, such issues are critical to safe return as they often lie at the origins of, or result from, conflict and are inextricably linked to achieving peace and preventing future violence. Greater efforts are needed by the Council and the international community at large to address housing, land and property issues on a consistent basis in peace agreements, operational programmes and through the establishment of appropriate restitution mechanisms. I would urge the Council to revisit the corresponding recommendations in my last report.

18. The Security Council should also place greater emphasis on preventing displacement in situations of conflict. The latest figures reveal that 26 million persons are currently internally displaced as a result of conflict, in addition to the approximately 11 million refugees who have crossed borders in search of safety. In its resolution 1674 (2006), the Council recalls the prohibition of forcible displacement under circumstances that violate international humanitarian law. More needs to be done to implement this prohibition, and to prevent the conditions that lead to displacement and the misery and degradation that follow. To this end, rapid and pre-emptive action by peacekeeping missions in areas of imminent displacement could significantly contribute to preventing the deterioration of conditions so that civilians are not forced or obliged to flee.

19. The Security Council has also called upon parties to conflict to end attacks against journalists. The International News Safety Institute reports that 29 journalists were killed while reporting on conflicts in 2008. I would recall the need, expressed in resolution 1738 (2006), for States and other parties to conflict to prevent such attacks and prosecute those responsible.

20. Further efforts to enhance protection on the ground are apparent in the application of targeted measures by the Security Council. For example, in its

resolutions 1572 (2004) and 1591 (2005), on Côte d'Ivoire and the Sudan, respectively, the Council called upon Member States to impose travel bans and asset freezes against persons responsible for human rights and humanitarian law violations. While several individuals have been listed on these grounds, implementation of the measures against them has been limited. This is regrettable given the importance of targeted measures as a response to and possible deterrent against violations. Member States should urgently take the steps necessary to fully implement the relevant resolutions.

21. The Security Council has also imposed arms embargoes in relation to several conflicts in order to stem the availability of arms and the human suffering resulting from their use, albeit with mixed results. In its resolution 1612 (2005), the Council urged Member States to control the illicit trade of small arms to parties that do not respect international law relating to the protection of children. While this is an important step to enhance the protection of children, it is necessary to take a broader approach involving similar measures against parties that do not respect international law relating to the protection of civilians more generally.

22. In addition to controls on the illicit trade in small arms, I would draw attention to continuing efforts to agree on international standards for the import, export and transfer of conventional arms. The absence of such standards contributes significantly to conflict and undermines the safety and security of civilians. In particular, I urge Member States participating in the open-ended working group on an arms trade treaty to ensure that respect for international humanitarian law and human rights law are among the criteria for assessing arms transfer decisions.

C. The enduring need to strengthen further the protection of civilians

23. Significant though they are, for all the reports, resolutions and actions of the last decade, the situation that confronts civilians in current conflicts is depressingly similar to that which prevailed in 1999. Civilians still account for the vast majority of casualties and continue to be targeted and subjected to indiscriminate attacks and other violations by parties to conflict. Ten years on, there remains an enduring need for the Security Council and Member States to strengthen further the protection of civilians. Moreover, as the tragic events in Sri Lanka demonstrate, even conflicts that are not perceived by all Council members to have implications for international peace and security could have a dramatic impact on civilians and may warrant Council attention.

24. The need to strengthen protection further lies, in part, in the changing nature of conflict in the last 10 years. The proliferation and fragmentation of non-State armed groups has contributed to the increasingly asymmetric nature of conflict in places such as Afghanistan, Iraq, Pakistan and Somalia. This has had a profoundly negative impact on civilians, as armed groups have sought to overcome their military inferiority by using strategies that flagrantly violate international law, including attacks against civilians and the use of civilians to shield military objectives. The risks for civilians are further heightened as militarily superior parties, in fighting an enemy that is often difficult, if not impossible, to identify, respond with methods and means of warfare that may violate the principles of distinction and proportionality, of which civilians again bear the brunt.

25. In a number of conflicts, we have seen increased reliance on private military and security companies, with sometimes fatal consequences for civilians. In this connection, I welcome the understanding reached among 17 States in September 2008 on the Montreux Document (S/2008/636, annex). It is an initiative of the Government of Switzerland and the International Committee of the Red Cross (ICRC) that clarifies international law as it relates to such companies operating in conflict and may serve as a basis for national regulation.

III. The five core challenges

26. Ultimately, the enduring need to strengthen the protection of civilians stems from the fundamental, and equally enduring, failure of parties to conflict to comply fully with their legal obligations to protect civilians. It is a failure that demands reinvigorated commitment and determined action so as to meet the following core challenges: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced United Nations peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations.

A. Enhancing compliance

27. A defining feature of most, if not all, contemporary conflicts is the failure of the parties to respect and ensure respect for their legal obligations to protect civilians and spare them from the effects of hostilities. All violations are of concern and initiatives are being pursued, both within and outside the United Nations, to prevent and better respond to such issues as sexual violence and forced recruitment. The focus of the present report, however, is on improving compliance with international humanitarian law in the conduct of hostilities. The failure of parties to conflict in this respect leads not only to the death and injury of hundreds of civilians in conflicts every week, but also to the displacement of thousands more forced to flee from attacks and the destruction of their homes, communities and livelihoods into an existence marked by the heightened risk of further violations as well as all the suffering and psychological anguish.

28. Constant care must be taken to spare the civilian population from the effects of hostilities. This requires, inter alia, strict compliance by parties to conflict with international humanitarian law and, in particular, the principles of distinction and proportionality, and the requirement to take all feasible precautions in attack and defence. Under no circumstances do violations of these rules by one party to a conflict justify violations by others.

29. For those launching attacks, this includes doing everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and refraining from indiscriminate attacks, including those that may be expected to cause incidental civilian casualties which would be excessive in relation to the concrete and direct military advantage anticipated from that specific attack. For those in defence, it means removing civilians and civilian objects from the vicinity of military objectives and avoiding locating military objectives within or near densely populated areas. It also means not using the presence, or ordering the

movement, of civilians to render areas immune from military operations or to shield military objectives from attack.

30. Disturbingly, violation of these rules appears almost commonplace. The intensification of fighting in the Vanni region of Sri Lanka, for example, was reportedly marked by the repeated use of heavy weapons by Sri Lankan armed forces in attacks on areas containing large numbers of civilians, including the so-called "no-fire zones", with reports of multiple strikes on medical facilities. Combined with the refusal of the Liberation Tigers of Tamil Eelam to allow civilians within its control to seek safety in an attempt to render areas immune from attack and to seek military and propaganda advantage, the consequences for civilians were catastrophic. Thousands were killed and wounded and their plight further compounded by extremely limited access to medical and other assistance.

31. The Israeli offensive in Gaza earlier this year resulted in high numbers of casualties, in particular among children, and the extensive destruction of, and damage to, homes, schools, including those run by the United Nations, and civilian infrastructure, raising extremely grave concerns as to Israel's compliance with international humanitarian law. Concerns also existed as to whether the civilian population was used to render areas immune from attack, as Hamas militants allegedly used residential buildings as bases from which to launch attacks against Israeli forces. Reports also indicate the possible use of schools and hospitals by Hamas militants to shield themselves and their weapons from attack.

32. In Afghanistan, according to UNAMA, over 1,100 civilians were killed during 2008 in attacks by anti-Government elements, including suicide attacks and attacks on educational facilities, teaching staff and students, in particular females. In addition, over 800 civilians were reportedly killed or injured in air strikes, search operations and force protection incidents involving national and international armed forces. Air strikes alone accounted for over 550 civilian casualties. I welcome the efforts made by the International Security Assistance Force and other international forces to minimize the risk of civilian casualties. However, I would emphasize the need for continued robust action in this regard, including the continuous review of tactics and procedures and the conduct of after-action reviews. I would also urge that air strikes and other incidents causing the death or injury of civilians or damage to civilian property be promptly investigated, adequate and timely information provided on the outcome of investigations and condolence payments made to those affected.

33. I would remind all parties to conflict of their obligations scrupulously to respect and ensure respect for the relevant rules. I would also urge them to consider practical steps that could be taken to spare civilians from the effects of hostilities, a process that may in some situations benefit from more discussion with local populations and their leaders, civilian authorities, civil society or humanitarian actors.

34. In Afghanistan, for example, wherever possible, alternatives to air strikes as a means of warfare must be further pursued. To minimize civilian casualties resulting from attacks targeting national and international forces, military facilities should not be located in, and military convoys should avoid wherever possible transiting through, civilian areas. In this connection, I would urge the development of strict guidance concerning the escalation of the use of armed force in the context of force protection incidents.

35. The choice of weapons is critical in minimizing and reducing the impact of hostilities on civilians. My last report highlighted efforts to address the humanitarian impact of cluster munitions. Since then we have seen much needed and commendable progress, with the adoption last year of the Convention on Cluster Munitions. Significant progress is evident also in reducing the number of victims of anti-personnel mines, following the entry into force in 1999 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. I strongly urge all States that have not yet done so to ratify both Conventions without delay.

36. While such progress in relation to cluster munitions and anti-personnel mines is welcome, I am increasingly concerned at the humanitarian impact of explosive weapons, in particular when used in densely populated areas. As demonstrated by this year's hostilities in Sri Lanka and Israel's campaign in Gaza, the use in densely populated environments of explosive weapons that have so-called "area effect" inevitably has an indiscriminate and severe humanitarian impact. First, in terms of the risk to civilians caught in the blast radius or killed or injured by damaged and collapsed buildings. Secondly, in terms of damage to infrastructure vital to the well-being of the civilian population, such as water and sanitation systems. I urge Member States, in consultation with relevant United Nations and other actors, to consider this issue further. I would also call upon States that have not yet done so to ratify Protocol V to the Convention on Certain Conventional Weapons with a view to addressing, in a timely and effective manner, the serious humanitarian problems caused by explosive remnants of war.

37. The Security Council also has a critical role in promoting systematic compliance with the law. In particular, the Council should:

(a) Use all available opportunities to condemn violations, without exception, and remind parties of, and demand compliance with, their obligations;

(b) Publicly threaten and, if necessary, apply targeted measures against the leadership of parties that consistently defy the demands of the Security Council and routinely violate their obligations to respect civilians;

(c) Systematically request reports on violations and consider mandating commissions of inquiry to examine situations where concerns exist regarding serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and prosecuting them at the national level, or referring the situation to the International Criminal Court.

B. Enhancing compliance by non-State armed groups

38. Together with the increased prevalence of non-international armed conflicts, pitting States against non-State armed groups, or two or more such groups against each other, a common feature of contemporary conflicts is the proliferation and fragmentation of such groups. They encompass a range of identities, motivations and varying degrees of willingness to observe international humanitarian law and human rights standards.

39. Armed groups are bound by international humanitarian law and must refrain from committing acts that would impair the enjoyment of human rights. For some groups, attacks and the commission of other violations against civilians are deliberate

strategies, intended to maximize casualties and destabilize societies. Others may be less inclined to attack civilians deliberately, but their actions still have an adverse impact on the safety and security of civilians. We need urgently to develop a comprehensive approach towards improving compliance by all these groups with the law, encompassing actions that range from engagement to enforcement.

40. As stated in common article 3 of the Geneva Conventions and in Additional Protocol II thereto, the application of international humanitarian law does not affect the legal status of non-State parties to a conflict. In order to spare civilians the effects of hostilities, obtain access to those in need and ensure that aid workers can operate safely, humanitarian actors must have consistent and sustained dialogue with all parties to conflict, State and non-State. Moreover, while engagement with non-State armed groups will not always result in improved protection, the absence of systematic engagement will almost certainly mean more, not fewer, civilian casualties in current conflicts.

41. The extensive experience of ICRC in working with armed groups, as well as that of United Nations actors and various non-governmental organizations, has demonstrated the possible benefits of dialogue on protection. Engagement can take the form of dissemination and training on international humanitarian law and human rights law standards. The incentives for armed groups to comply with the law should be emphasized, including increased likelihood of reciprocal respect for the law by opposing parties.

42. Bearing in mind that armed groups have legal obligations, engagement may be based around the conclusion of codes of conduct, unilateral declarations and special agreements, as envisaged under international humanitarian law, through which groups expressly commit themselves to comply with their obligations or undertake commitments that go above and beyond what are required by the law. Such instruments have been concluded in a number of contexts, including in Colombia, Liberia, Nepal, the Philippines, Sierra Leone, Sri Lanka, the Sudan and the former Yugoslavia. Their conclusion can send a clear signal to the groups' members and lead to the establishment of appropriate internal disciplinary measures. They also provide an important basis for follow-up interventions. It is, however, critically important that such tools and the commitments and principles therein are incorporated into instructions and communicated to the groups' members.

43. Other initiatives include those of my Special Representative on Children and Armed Conflict with respect to ending the recruitment and use of children by armed groups. Another specific and successful example is the Geneva Call Deed of Commitment, which seeks to end the use of anti-personnel mines by armed groups. To date, 38 groups have signed the Deed and have, for the most part, refrained from using anti-personnel mines, cooperated in mine action in areas under their control and destroyed stockpiles.

44. Member States can themselves promote compliance by armed groups. Members of such groups have little legal incentive to comply with international humanitarian law if they are likely to face domestic criminal prosecution for their mere participation in a non-international armed conflict, regardless of whether they respect the law or not. Granting amnesty for merely participating in hostilities, though not in respect of any war crimes and serious violations of human rights law which may have been committed, as envisaged in Additional Protocol II to the Geneva Conventions, may in some circumstances help provide the necessary incentive.

45. At the absolute minimum, it is critical that Member States support, or at least do not impede, efforts by humanitarian organizations to engage armed groups in order to seek improved protection for civilians — even those groups that are proscribed in some national legislation. Engagement through training or the conclusion of special agreements can provide entry points for dialogue on more specific concerns, such as humanitarian access, protection of humanitarian workers and sexual violence. Of particular relevance to the Security Council, such dialogue can also in some instances contribute to confidence-building between parties which can lead, in time, to the cessation of hostilities and the restoration of peace and security.

46. There will be times when engagement proves futile. However, it should not be dismissed out of hand. Armed groups are not monoliths. They have entry points, such as through the local population, and members who may be more predisposed to engagement. However, when such efforts fail, alternatives must be considered, including the application of the measures outlined in paragraph 37 above, namely systematic condemnation of violations committed by armed groups and demands for compliance together with the application of targeted measures.

47. As a first step towards developing a more comprehensive approach to armed groups, it may be useful to convene an Arria formula meeting to discuss the experience of United Nations and non-governmental actors in working with armed groups and to identify additional measures that the Security Council and Member States could take to improve compliance.

C. Protection of civilians and United Nations peacekeeping and other relevant missions

48. The inclusion of protection activities within the mandates of United Nations peacekeeping missions and other relevant missions has been a significant development in the efforts of the Security Council to improve protection on the ground. The protection roles assigned to these missions include ensuring physical protection, in particular for those under imminent threat of physical danger, assisting in the creation of conditions conducive to the voluntary, safe and dignified return of refugees and internally displaced persons, ensuring the protection of humanitarian personnel and facilitating the provision of assistance, ensuring child protection and addressing sexual violence.

49. The very presence of a peacekeeping operation will usually help to dampen any residual conflict and deter the escalation of violence, including against civilians. This role in assisting the host authorities to provide a safe and secure environment is perhaps the single largest contribution that these missions can make to protection. In recent years, from Sierra Leone to Liberia to Burundi and beyond, peacekeeping operations have made lasting contributions to the safety and security of civilian populations. Much more needs to be done, however, in responding to situations where conflict re-emerges, or threatens to re-emerge, and in understanding the full range of options available to missions and the capacities required to better implement mandates to protect civilians.

50. An independent study, commissioned by the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations, to be completed in the summer of 2009, will provide a detailed analysis of the

implementation of such mandates and recommendations for improving their impact. The findings of the study will be shared with the Security Council in due course. In the meantime, a number of issues bear highlighting.

51. In its resolution 1674 (2006) the Security Council states its intention to ensure that mandates include clear guidelines as to what missions can and should do to protect civilians. Such clear direction from the Council would be welcome and, ideally, would be informed by a realistic assessment of what is possible based on consultations with the Secretariat, troop and police contributors and other stakeholders. Currently, there remains a disconnect between mandates, intentions, expectations, interpretations and real implementation capacity.

52. This means that the "protection of civilians" mandate in peacekeeping missions remains largely undefined as both a military task and as a mission-wide task. Each mission interprets its protection mandate as best it can in its specific context. Some missions, such as the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and MONUC, have developed force directives or mission-wide guidance to this end. Of course, heads of missions and force commanders must have latitude to interpret the mandate in light of their specific circumstances. However, this should take place within a broader policy framework that includes clear direction as to possible courses of action, including in situations where the armed forces of the host State are themselves perpetrating violations against civilians, as well as indicative tasks and the necessary capabilities for their implementation.

53. Protection of civilians is not a military task alone. All components of a mission, including police, humanitarian affairs, human rights, child protection, mine action, gender, political and civil affairs, public information, rule of law and security sector reform, can and must contribute to discharging the mission's protection mandate. To this end, more missions are beginning to develop inclusive mission-specific protection strategies and plans of action, in consultation with Special Representatives of the Secretary-General, Force Commanders, humanitarian country teams, the host Government and communities. This is a welcome development and all missions should be encouraged to develop such inclusive strategies, establishing priorities, actions and clear roles and responsibilities.

54. Resolution 1674 (2006) also sets forth the intention of the Security Council to ensure that the protection of civilians is prioritized in decisions concerning the use of "available capacity and resources" in the implementation of mission mandates. While the development of the above-mentioned strategies will help the prioritization and resource allocation effort, this also points to another important issue: ensuring that the "available capacity and resources" are appropriate for the task at hand and are made available in a timely manner. This is particularly important in volatile situations in which peacekeeping missions must operate with robust rules of engagement.

55. In elaborating protection mandates, strategies and plans of action, it is essential that all actors remain mindful of the constraints faced by peacekeeping operations in identifying adequate resources, capacities and capabilities to meet the mandated tasks. The popular and political expectations of what peacekeeping operations can achieve must be calibrated against the resources available to the mission and against the political, geographical and operational context.

56. In Darfur, for example, despite the intolerable situation confronting the civilian population (further aggravated by the recent expulsions and subsequent reduction in the presence of several major non-governmental organizations), as of 31 March 2009, the total strength of UNAMID military personnel stood at 13,134, that is, 67 per cent of its mandated strength. Many of the personnel are the engineers and logisticians required to establish and support the Mission, not infantry and other mobile capabilities. The strength of its police personnel stood at 2,478, that is, 38 per cent of its mandated strength. UNAMID thus remains severely constrained in its ability to conduct protection-related operations.

57. But it is not simply a question of having the right personnel, with the right skills, on the ground in sufficient numbers. Having the right equipment (for example, air mobility and night vision equipment), the right training for all mission personnel in how to deliver more effective protection and the ability to use the personnel that are on the ground tactically are all absolutely crucial.

D. Humanitarian access

58. Access is the fundamental prerequisite for humanitarian action (see annex). Under international humanitarian law, parties to conflict must protect and meet the basic needs of persons within their control. In situations where they are unwilling or unable to do so, humanitarian actors have an important subsidiary role to play. In such circumstances, parties should agree to relief operations that are humanitarian and impartial in character and conducted without any adverse distinction, and must allow and facilitate rapid and unimpeded passage of relief consignments, equipment and personnel. In its resolution 46/182, the General Assembly called upon States whose populations are in need of humanitarian assistance to facilitate the work of intergovernmental and non-governmental organizations in implementing such assistance "for which access to victims is essential". The Security Council has also underlined the need for all parties concerned, including non-State actors and neighbouring States, to cooperate fully with the United Nations in providing safe, timely and unimpeded access to civilians in armed conflict.

59. In response to calls from members of the Security Council for better analysis, monitoring and response to access restrictions, an annex has been included to the present report. As detailed in the annex, access is increasingly unsafe in many places, frequently delayed and often impeded, leaving millions of vulnerable people deprived of life-saving assistance. Constraints on access should have consequences for those who impose them, not merely for those who suffer from them. The Council has an important role to play in ensuring an environment that is conducive to facilitating access to those in need. More specifically, key findings suggest that the Council should:

(a) Consistently condemn and call for the immediate removal of impediments to humanitarian access that violate international humanitarian law;

(b) Call for strict compliance by parties to conflict and third States with their obligations to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel, and encourage States to promote respect for humanitarian principles;

(c) Call upon parties to conflict to allow safe passage for civilians seeking to flee zones of fighting;

(d) Call upon parties to conflict to agree to the temporary suspension of hostilities and implement days of tranquillity in order to enable relief actions by humanitarian actors;

(e) Call upon parties to conflict to cooperate with humanitarian organizations in the establishment of de-conflicting arrangements in order to facilitate the delivery of assistance during hostilities;

(f) Call upon relevant parties to conclude and implement agreements so as to expedite the deployment of humanitarian personnel and assets. Negotiations could be assisted by the development of a standard moratorium on visa requirements, work and travel permits, and on customs duties and import restrictions on humanitarian goods and equipment;

(g) Mandate United Nations peacekeeping and other relevant missions, where appropriate and as requested, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;

(h) Apply targeted measures against individuals obstructing access to, or the distribution of, humanitarian assistance;

(i) Refer grave and prolonged instances of the wilful impediment of relief supplies to the International Criminal Court.

60. Considering the frequency and gravity of attacks and other violations against humanitarian workers, as detailed in the annex, the Security Council is urged to:

(a) Consistently condemn and call for the immediate cessation of all acts of violence and other forms of harassment deliberately targeting humanitarian workers;

(b) Call for strict compliance by parties to conflict with international humanitarian law, including the duty to respect and protect relief personnel and installations, material, units and vehicles involved in humanitarian assistance;

(c) Call upon States affected by armed conflict to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;

(d) Call upon Member States that have not done so to ratify and implement the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol;

(e) Apply targeted measures against individuals responsible for attacks against humanitarian workers and assets;

(f) Refer grave instances of attacks against humanitarian workers to the International Criminal Court.

E. Enhancing accountability

61. Integral to the foregoing challenges is the need to ensure accountability for violations of international humanitarian law and human rights law, both for individual perpetrators and for parties to conflict. In many conflicts, it is to a large

degree the absence of accountability and, worse still, the lack in many instances of any expectation thereof, that allows violations to thrive.

62. In its resolution 1674 (2006), the Security Council reaffirmed that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past violations and prevent their recurrence. The Council also drew attention to the range of possible justice and reconciliation mechanisms, including national, international and "mixed" criminal courts and tribunals, and truth and reconciliation commissions, noting that such mechanisms can promote not only individual criminal responsibility for serious crimes, but also peace, truth, reconciliation and the rights of victims. In addition to supporting the restoration of the rule of law in general, the Council should call for and support security sector reform and transitional justice mechanisms, as appropriate, including by mandating peacekeeping and other relevant missions accordingly.

63. Importantly, resolution 1674 (2006) emphasizes the responsibility of States to prosecute those suspected of genocide, crimes against humanity and war crimes. The Security Council itself has set important examples by establishing the International Tribunals for the former Yugoslavia and for Rwanda, in 1993 and 1994, respectively, and requesting the establishment in 2004 of the International Commission of Inquiry on Darfur followed, on the basis of the Commission's findings, by the referral of the situation to the International Criminal Court. However, States and other parties to conflict, as appropriate, must follow the Council's lead and do more to exercise their responsibilities to ensure accountability and, in so doing, deter further violations. Moreover, ensuring accountability at the national level, rather than resorting to such international mechanisms as the International Criminal Court, would help to alleviate some of the tensions that are perceived to exist between the pursuit of justice, on the one hand, and the pursuit of peace, on the other.

64. In terms of steps at the national level, the removal in October 2008 of 25 members of the Colombian armed forces for failures relating to alleged enforced disappearances, as well as prosecutions this year in the United States of America of military personnel accused of war crimes in Iraq, are instructive of the type of national-level actions that need to be pursued. It is imperative that we move beyond such isolated examples and take concrete steps at the national level to instil, in particular among combatants, a genuine expectation of accountability in war.

65. In particular, Member States, as well as non-State parties to conflict, as appropriate, should:

(a) Provide training to combatants on international humanitarian law and human rights law, including refresher training;

(b) Issue manuals, orders and instructions setting out their obligations and ensure the availability of legal advisers to inform commanders on the application of the law;

(c) Ensure that orders and instructions are observed by establishing effective disciplinary procedures, central to which must be strict adherence to the principle of command responsibility.

66. If it is not already the case, Member States should, in addition:

(a) Adopt national legislation for the prosecution of persons suspected of genocide, crimes against humanity, war crimes and other serious violations of human rights law;

(b) Search for and, on the basis of universal jurisdiction, prosecute persons suspected of grave breaches of international humanitarian law and serious violations of human rights law, or extradite them;

(c) Ratify the statute of the International Criminal Court without delay;

(d) Cooperate fully with the International Criminal Court and similar mechanisms.

67. For its part, the Security Council is urged to:

(a) Insist that Member States cooperate fully with the International Criminal Court and similar mechanisms;

(b) Enforce such cooperation, as necessary, through targeted measures;

(c) Systematically request reports on violations and consider mandating commissions of inquiry to examine situations where concerns exist about serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and their being held accountable at the national level, or subjected to targeted measures and/or the situation referred to the International Criminal Court.

68. Significant developments in advancing individual criminal responsibility should not distract us from another critical dimension of accountability: the responsibility of parties to conflict to comply with international humanitarian law and human rights law, and the duty to make reparations for violations thereof. Emphasis on this dimension is important for a number of reasons.

69. First, not all violations of international humanitarian law are war crimes for which there is individual criminal responsibility. Moreover, some violations of international humanitarian law are crimes in international armed conflict but not in non-international armed conflict, which is the prevailing type of contemporary conflict, and international criminal responsibility exists only for a small minority of human rights violations. State responsibility, however, exists in relation to all violations of international humanitarian and human rights law.

70. Secondly, the outcome of criminal proceedings are verdicts of guilt or innocence and, unlike determinations of State responsibility, do not necessarily give rise to an obligation to make reparations. Both during and after conflict, where civilians often lose their possessions and assets, including those vital to their livelihoods, reparations are essential to allowing them to rebuild their lives. As with all forms of accountability, reparations can also play a significant role in deterring violations.

71. The right of individuals to reparations for gross violations of international human rights law and serious violations of international humanitarian law, and the steps required to give effect to this right, were spelled out in the United Nations Basic Principles and Guidelines on the issue, adopted by the General Assembly in

its resolution 60/147. I would urge Member States to take the Basic Principles into account and promote respect for them.

72. Although infrequent, reparations mechanisms have been established at the international and national levels. Such mechanisms include the United Nations Compensation Commission, established by the Security Council in its resolution 687 (1991), and the Eritrea-Ethiopia Claims Commission, established pursuant to the peace agreement of December 2000. The Commission allowed individuals to file claims against States for acts that, inter alia, violated international humanitarian law and human rights law. Reference should also be made to property restitution mechanisms established in Bosnia and Herzegovina, Kosovo and Timor-Leste and, most recently, to the establishment, pursuant to General Assembly resolution ES-10/17, of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, following the Advisory Opinion of the International Court of Justice of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Register is mandated to receive claims from all natural or legal persons who have suffered material damage as a result of the construction of the wall.

73. This dimension of accountability must not be overlooked. I would urge the Security Council to call upon States to establish, or to itself mandate, in relevant contexts, mechanisms to receive claims alleging violations of international humanitarian law and human rights law and to support their establishment.

IV. Conclusions and next steps

74. The last 10 years have provided us with a tantalizing sense of the potential of the protection of civilians agenda. The task before us now is to take the necessary steps to fully realize that potential and meet the five core challenges identified in the present report.

75. The report provides pertinent recommendations to this end, premised on the overriding need to enhance compliance and accountability in conflict, that is to say, compliance by all parties to conflict with the applicable law and the demands and decisions of the Security Council, and accountability for those individuals and parties that fail to comply therewith.

76. Fortunately, the Security Council has the tools required for taking these recommendations forward. In practice, this entails:

(a) Consistent application of the aide-memoire on the protection of civilians in the deliberations of the Security Council, to assist in identifying the pertinent issues and the required responses;

(b) Regular meetings of the Expert Group, in advance of the establishment and renewal of peacekeeping mandates and with regard to situations impacting adversely on civilians, to ensure that relevant protection concerns and possible responses are discussed and incorporated into the Council's actions;

(c) Consistent condemnation of violations of the law by all parties to conflict, without exception, and demands for their compliance;

(d) Ensuring of consequences for non-compliance, including:

(i) The imposition — and full implementation — of targeted measures against those individuals and parties that ignore or defy the Council's demands;

(ii) Mandating commissions of inquiry to examine situations where concerns exist regarding serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and prosecuting them at the national level, or referring the situation to the International Criminal Court;

(e) The timely deployment, in relevant situations, of peacekeeping missions or additional temporary capacity with robust protection mandates, appropriate guidance for their implementation and the requisite human and logistical and tactical capacity to ensure the protection of civilians on the ground.

77. I have asked the Under-Secretary-General for Humanitarian Affairs to consult with members of the Security Council on how to take forward the recommendations in the present report, and any additional recommendations that Council members and other Member States may wish to advance during the open debate on protection of civilians in June 2009. The outcome of these consultations will be presented at the open debate in November 2009.

78. At the open-debate in November, I would urge the Security Council and Member States to seize the opportunity of the tenth anniversary of the protection of civilians to reinvigorate their commitment to this agenda and, above all, to work with the United Nations and other relevant actors in a comprehensive and determined effort to make the protection of civilians more systematically and consistently a reality for all those caught or trapped in the conflicts of today, or those of tomorrow.

Annex

Constraints on humanitarian access

1. Safe, timely and unhindered access is fundamental to efforts to protect civilians and assist those in need. Yet, throughout the world, including in countries on the agenda of the Security Council, the harsh reality is that, owing to a variety of constraints, millions of people have inadequate access to assistance essential for their survival and well-being during times of armed conflict.

2. Understanding the distinct types and patterns of constraints on humanitarian access in a given situation is essential to responding to them. To this end, the Office for the Coordination of Humanitarian Affairs is undertaking more systematic monitoring and analysis of such constraints. The initial findings of that analysis form the basis for the present annex. It aims to provide the Security Council with information on key trends in access constraints and possible measures to contribute to an environment conducive to facilitating access to those in need.

I. Types of constraints

3. Constraints on humanitarian access in armed conflict take different forms. Not all constraints are deliberate in nature and they do not all constitute violations of international humanitarian law. Some are a consequence of the physical environment, such as challenging terrain, harsh climate and inadequate infrastructure, and pose primarily logistical challenges.

4. Other constraints are a consequence of Government policies or the practices of local actors which interfere with humanitarian operations. Still others are related to the intensity of fighting or frequent violence against aid workers and assets.

5. In most conflicts, it is a combination of constraints that prevents aid from reaching civilian populations in need, when and where they need it. The implications for humanitarian operations are decreased effectiveness of activities and increased operational costs. The consequences for conflict-affected populations are protracted suffering and increased risk of displacement, disease and malnourishment.

II. The most severe and prevalent constraints

6. Three types of constraints on access currently pose the greatest challenges owing to their widespread and frequent occurrence and the severity of their implications for humanitarian personnel and operations and of their consequences for populations in need. These are bureaucratic constraints imposed by Governments and other authorities, the intensity of hostilities and attacks on humanitarian personnel and assets.

A. Bureaucratic constraints

7. Bureaucratic restrictions imposed at some, or all, stages of an aid operation can be onerous and time-consuming, and too often cause significant delays in the provision of aid. While, under international humanitarian law, humanitarian

activities are subject to the consent of the affected State, restrictions must not place undue burden on those operations at the expense of timely access to, and to the detriment of, the affected population.

1. Restrictions on entry into the country of operations

8. Bureaucratic restrictions are often imposed on the entry of humanitarian organizations, staff and goods into the country of operations. These lay down complex and lengthy procedures, for example, for negotiating technical agreements with host States, can affect which organizations may operate and where, and complicate the issuance of visas and permits for staff as well as the import of relief supplies. There are many examples, of which three recent cases are described below.

9. In Sri Lanka, permission for the entry of humanitarian personnel into the country requires three levels of authorization, including the relevant line ministries and the Ministries of Defence and Foreign Affairs. The result is delays in staff deployments and significant staff hours consumed processing the required documents.

10. In the Sudan, lapses in the implementation of the 2004 and 2007 Joint Communiqués between the Government and the United Nations, which sought to streamline bureaucratic procedures affecting humanitarian operations, have meant that it typically takes several months to start new humanitarian projects, including recruiting national staff and finalizing technical agreements. For example, it has taken non-governmental organizations up to 27 weeks to deploy international personnel.

11. Furthermore, in March 2009, the Government of the Sudan took the unprecedented decision of suspending the activities of 16 international and national non-governmental organizations. This action contravened the intent of the Joint Communiqués and undermined the considerable effort invested to ensure their implementation. The expulsions had direct humanitarian consequences, including an initially increased risk of water-borne disease for over 900,000 people and significantly reduced surveillance of, and capacity to respond to, outbreaks of communicable disease in Darfur. It also severely compromised the logistical capacity of the humanitarian effort in Darfur, thus constraining the availability of such basic goods as shelter materials. Recent negotiations and efforts to fill the gaps in capacity, have attempted to minimize the impact of the expulsions. However, such a decision would have been much better avoided. The Government of the Sudan has now agreed to new procedures and coordination structures so as to better facilitate relief activities in the Sudan. The implementation of these arrangements must be closely monitored and reinforced in coming months to enable humanitarian actors to adequately and expeditiously address the needs of the affected population of Darfur.

12. Following the hostilities in August 2008, conflicting policies regulating access to South Ossetia were adopted by the relevant parties. The Georgian law on the occupied territories prohibits any humanitarian activity except that accredited by Georgia and undertaken from within Georgia. However, the South Ossetian side and the Government of the Russian Federation insist that humanitarian actors enter South Ossetia via the Russian Federation with the authorization of the South Ossetian side. Although ICRC has re-established its activities in South Ossetia, United Nations humanitarian agencies have yet to receive a response to their attempts to establish a dialogue with the South Ossetian leadership. As a result,

while the Government of the Russian Federation undertook significant relief operations in the wake of the hostilities in August 2008, United Nations agencies have been unable to determine the extent of, and respond to, any outstanding humanitarian needs in the area.

2. Restrictions on operations

13. Once on the ground, humanitarian actors often have to comply with various additional bureaucratic procedures. In some contexts, non-compliance with the minutiae of such procedures can have serious repercussions for humanitarian organizations and beneficiaries, including the closure of operations. Restrictions are often applied to place limits on access to specific areas, on the amount and type of permitted relief items, and how they must be transported.

14. Parties to conflict are entitled to prevent the diversion to their opponents of goods which could be used for military purposes and often take measures to prevent aid distributions consisting of potentially dual-use items. Such measures must be tailored so as not to prevent humanitarian assistance from reaching populations in need. The risk of improper use of relief items can be reduced by allowing humanitarian agencies to manage and monitor the provision of humanitarian aid.

15. For example, even prior to the intensification of hostilities in Sri Lanka, restrictions on the movement of relief items into areas controlled by the Liberation Tigers of Tamil Eelam (LTTE) hindered the provision of humanitarian assistance to those in need. Essential items, such as construction materials, were prohibited. The resulting shortfalls in construction materials affected the fulfilment of shelter and sanitation needs of the affected population, while requests for medicines and for fuel quotas for humanitarian organizations often went unanswered, were only allowed in part, or were delayed or denied. As a result, hospitals were consistently short of essential medicines and lacked sufficient fuel to operate generators, refrigerators and ambulance services.

16. Restrictions are often applied inconsistently, creating unpredictability in the implementation of activities and crippling the flow of humanitarian aid. The import of humanitarian supplies into Gaza, for example, remains subject to unclear and inconsistent criteria and procedures. Together with restrictions on certain relief materials, limitations are imposed on the transfer of cash for humanitarian activities and permission for humanitarian personnel to enter Gaza is often denied or delayed. The cumulative effect of these restrictions and their unpredictability contribute to the protracted suffering of Gaza's civilian population. Since the end of hostilities in January 2009, the Government of Israel has continued to refuse the entry of essential building materials required for the repair or reconstruction of essential public infrastructure, including water supply, sanitation and private homes. Over 50,000 persons continue to be homeless, some of whom live in tents, while water, electricity and sanitation remain inadequate.

17. Furthermore, while bureaucratic impediments often take the form of policies issued at a central level, an overwhelming accumulation of ad hoc and evolving demands imposed by local level officials frequently affect the most basic aspects of humanitarian operations and often contradict central Government policies. In Ethiopia, for example, while the Government has begun to allow humanitarian activities in the Ogaden region, including the provision of food aid for distribution by local actors, access for humanitarian organizations is limited by requirements

imposed by local military commanders who often do not recognize such permissions.

18. In Somalia, local authorities have demanded that humanitarian organizations register and pay fees in each locality where they want to operate, while local armed groups have threatened humanitarian organizations against complying with such demands. In Darfur, the constant proliferation of additional ad hoc restrictions by central and local Government authorities adds to the complexity of impediments on assistance activities. For example, permission is required to move goods from Khartoum to State capitals, where additional restrictions on the means by which supplies are deployed to areas of humanitarian activity are imposed. Humanitarian personnel spend significant portions of their time navigating multiple and often inconsistent demands. The lengthy delays associated with each level of bureaucracy have even resulted in food and medicines becoming spoiled.

3. Impediments to the movement of humanitarian personnel and goods

19. Checkpoints and roadblocks established by State as well as non-State actors also frequently obstruct the movement of relief personnel and goods. In south-central Somalia, for example, hundreds of checkpoints and roadblocks, frequent searches of vehicles and personnel, as well as extortion by the many different armed actors operating checkpoints, result in numerous delays and the diversion of assistance. Road travel that should take a few hours can take days. In February 2009, security committees in Mogadishu and Banadir, formed by the parties to the Djibouti Agreement, gave armed groups 48 hours to dismantle roadblocks in the region, thus providing some, albeit limited, relief from harassment and extortion.

20. In the occupied Palestinian territories, impediments to the passage of humanitarian personnel and goods are prolific. In the West Bank, in 2008, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) recorded 918 incidents of interference with the passage of personnel and goods, a 210 per cent increase compared to 2007, resulting in the loss of 16,500 staff hours.

21. In Gaza, the restrictions on border crossings that were imposed in June 2007, which currently remain in effect, continue to impede humanitarian operations and early recovery efforts. For example, the requirement of the Government of Israel that humanitarian goods enter via the Kerem Shalom military crossing rather than via the main commercial crossing point of Karni, which has greater capacity to handle large volumes of goods, adds significant travel time and expense. Furthermore, goods must be unloaded, screened and then reloaded on the opposite side of the border, a requirement which the World Food Programme (WFP) and UNRWA estimate adds $1.5 to $2 million per year to programme costs. The lack of spare parts for medical equipment at hospitals and clinics has had a serious impact on the health of the population of Gaza, already weakened by inadequate diet and limited access to specialist medical treatment abroad.

B. Intensity of hostilities

22. In contexts such as Afghanistan, the Central African Republic, Chad, Colombia, the Democratic Republic of the Congo, Iraq, the occupied Palestinian territories, Pakistan, Somalia, Sri Lanka and the Sudan, the intensity of hostilities

frequently precludes access to affected populations and prevents or interrupts ongoing assistance activities. These problems are often exacerbated by the fact that parties to conflict have failed to establish arrangements to enable aid delivery by humanitarian organizations.

23. In Afghanistan, hostilities in the south and south-east of the country have severely impeded movement of both civilian populations and humanitarian organizations, affecting access to assistance in these areas. In the Democratic Republic of the Congo, access has typically been influenced by outbreaks of intense fighting when peace negotiations have stalled. Renewed hostilities between Government forces and the Lord's Resistance Army (LRA) towards the end of 2008 hampered the movement of humanitarian personnel to those affected by the fighting in North Kivu, Haut-Uélé and Ituri. Intense fighting in October and November 2008 forced humanitarian agencies to temporarily evacuate Goma and several other humanitarian hubs. More than 14,000 people who sought refuge from LRA violence in the town of Doruma were cut off from humanitarian aid for nearly two months. Frequent population movements and limited access have prevented a thorough assessment of needs in the east of the country, and it is estimated that up to 100,000 people remain unable to access humanitarian aid.

24. In Sri Lanka, following the relocation of humanitarian agencies from the Vanni in September 2008, a limited number of relief convoys and sea shipments were able to transport some aid to the conflict zone. But these fell far short of the assistance required, including for critically needed medical supplies to treat and evacuate wounded civilians, which has meant that otherwise treatable injuries have frequently resulted in deaths and amputations.

25. Meanwhile, currently, the increased presence of State and non-State parties to the conflict and the intensification of hostilities in north-western Pakistan present significant challenges to reaching the affected civilian population. The United Nations Emergency Relief Coordinator has dispatched a Senior Humanitarian Adviser to help facilitate dialogue so as to obtain the necessary security assurances and to establish appropriate operational modalities so that humanitarian actors can respond to the growing humanitarian need.

26. Few humanitarian agencies and only a fraction of the aid required were permitted into Gaza during the three weeks of hostilities that began in late December 2008. Unilateral suspensions in hostilities were observed but were of insufficient duration to allow safe access to medical services and the distribution of sufficient assistance to the affected population, or to address public health problems resulting from the destruction of civilian infrastructure, in particular public water supply and sanitation facilities. A non-governmental organization survey of the conflict-affected population carried out at the end of January 2009 found that 89 per cent of respondents had not received any assistance since the onset of hostilities.

27. Periodic armed skirmishes have also interrupted the provision of assistance in contexts such as the Central African Republic, Chad, the Democratic Republic of the Congo, the Sudan and Somalia. For example, attacks in a residential area of Mogadishu in January 2008 resulted in the suspension for 20 days of an emergency food programme for 5,000 extremely vulnerable people. In the Central African Republic, a rebel attack on Batangafo in February 2009 resulted in the temporary suspension of emergency school feeding programmes affecting, 22,000 beneficiaries. Though such disruptions may be temporary, they occur frequently and affect

thousands of vulnerable people whose well-being depends on consistent and reliable access to assistance.

28. Access problems are not only a result of the inability of humanitarian actors to reach affected populations. Often it is these populations that face difficulties in safely reaching locations where assistance can be provided. During the same hostilities in Gaza, civilians wishing to seek sanctuary in Egypt or Israel to escape the intense aerial bombardment and heavy ground fighting were unable to do so owing to the closure of the border crossing points by the relevant authorities. An estimated one quarter of the population of 1.5 million people was displaced during the fighting, many of whom were obliged to move from one location to another in an effort to find safety. In Sri Lanka, following the intensification of hostilities in the Vanni in 2008, LTTE forcibly prevented civilians from seeking safety and assistance outside the conflict zone.

C. Violence against humanitarian personnel and theft of assets

29. One of the most significant constraints on access is the striking increase in recent years in attacks against humanitarian workers and assets. Violence against humanitarian workers greatly restricts their mobility on the ground, often results in the suspension and, sometimes, cessation of assistance activities, and places the well-being of hundreds of thousands of people at risk.

30. Such violence may be perpetrated by criminal actors for economic gain or by State or non-State actors for political purposes. While it is often difficult to distinguish between these different motivations, it is important to do so, as this will inform the type of response required to mitigate the risks.

1. Global trends

31. Recent statistical analysis on aid worker insecurity published by the Overseas Development Institute reveals that attacks on humanitarian personnel, facilities and assets have increased significantly in recent years. The overall upward trend since 1997 is marked by a sharp increase in incidents since 2006, with 2008 marking the greatest number of humanitarian workers affected by violence in 12 years. The incidence of kidnapping of humanitarian personnel alone has increased by 350 per cent in the past three years.

32. While the overall number of humanitarian workers has grown over the last decade, the relative increase in incidents against humanitarian personnel and assets surpasses that growth. Around 75 per cent of attacks on aid workers in the past three years have occurred in Afghanistan, Chad, Iraq, Pakistan, Somalia, Sri Lanka and the Sudan. Three of these contexts — Afghanistan, Somalia and the Sudan — account for more than 60 per cent of attacks since 2006.

33. National personnel, in particular local contractors of United Nations agencies and non-governmental organization staff, continue to be the most vulnerable, though there has also been a sharp increase in attacks on international staff in the past three years. ICRC is the only humanitarian organization to have experienced a decline in attacks on its personnel. The study attributes this, in part, to the organization's approach to security management which, importantly, emphasizes dialogue with potential sources of threats.

2. Violence against humanitarian personnel

34. Humanitarian personnel have been killed, abducted or otherwise subjected to violence in such places as Afghanistan, Chad, the Democratic Republic of the Congo, Iraq, Pakistan, the Philippines, Somalia, Sri Lanka and the Sudan.

35. In the Democratic Republic of the Congo, more than 20 violent attacks on humanitarian personnel occurred in the first two months of 2009, as compared to 14 during the same period in 2008. In Darfur, attacks and other crimes against humanitarian workers have constantly increased since the international aid effort intensified four years ago. In the first four months of 2009 alone, three humanitarian workers were killed, 18 were assaulted and 15 were abducted.

36. In Somalia, since November 2007, humanitarian workers have been victims of more than 200 violent incidents, including 37 fatalities. Sixteen abducted humanitarian workers remain captive. A bomb attack on the United Nations compound in Hargeisa, which killed two staff members and wounded several others, resulted in the suspension of one third of United Nations activities in Somaliland.

37. In Afghanistan, in 2008, there were 7 abductions of United Nations personnel and 12 armed attacks on United Nations facilities. In addition, 31 non-governmental organization workers were killed that year, the greatest number of fatalities since 2002 and twice those killed in 2007. In addition, there were 170 violent incidents against non-governmental organization personnel, including 78 abductions and 27 staff seriously wounded, an increase of 20 per cent compared to 2007. The first three months of 2009 have seen a 25 per cent increase over the same period in 2008 in incidents directly affecting non-governmental organizations, with abductions and attacks by armed groups involving the use of small arms posing the greatest threats.

38. The severity and prevalence of violence can lead to the suspension or cessation of aid activities and therefore frequently deprives extremely vulnerable people of life-saving assistance. For example, the killing of three staff members in Somalia in January 2008 forced one non-governmental organization to end health services which performed around 70 surgeries and 200 emergency consultations every month.

39. In Iraq, the lack of acceptance of United Nations and non-governmental organization humanitarian actors by Iraqi armed groups and significant security risks to personnel have resulted in heavy reliance on the remote management of humanitarian programmes. Experience has shown, however, that remote management is typically appropriate only in the short term as, over time, programme quality and effectiveness diminishes and other, more sustainable, options must be developed. Limited access in Iraq has had significant humanitarian consequences. In September 2008, some 38 per cent of the 1.6 million internally displaced persons had not received any humanitarian assistance during their displacement.

3. Theft of humanitarian assets

40. Parties to conflict and criminal groups frequently prey upon the assets of humanitarian actors, in particular where chains of command are weak or there is a general breakdown of law and order.

41. The theft of humanitarian supplies and assets, in particular vehicles, is an increasingly acute threat to humanitarian action in several conflicts. In Afghanistan, over 40 humanitarian aid convoys and 47 aid facilities were attacked, ambushed or looted in 2008. In Darfur, the number of humanitarian vehicles hijacked or stolen in 2008 doubled compared to 2007, as did the number of armed assaults on humanitarian premises. This trend has continued in 2009, with 41 vehicles hijacked and 54 armed assaults as of mid-April.

42. Humanitarian workers and supplies are particularly vulnerable on roads. In Darfur, for example, owing to insecurity on the roads, many areas have, for several years, been accessible only by air. Travel from Nyala to Kass in Southern Darfur takes only two hours by road. However, the level of banditry requires most agencies to travel by air, increasing the cost of providing assistance to over 200,000 people in Kass and surrounding areas. This is further compounded by constraints on the ability of the United Nations Humanitarian Air Service to operate, including the lack of predictable financing.

43. In North Kivu province of the Democratic Republic of the Congo, 124 violent incidents against humanitarian agencies were reported in 2008 and the trend has increased in 2009. Such incidents are primarily economically motivated and fuelled by the incomplete demobilization of ex-combatants, the fragmentation and proliferation of armed groups and the non-payment of salaries to members of the national armed forces.

44. In Chad, criminal groups have exploited the breakdown of law and order in the east of the country to loot humanitarian supplies. This has frequently led to the temporary suspension of humanitarian activities in the border area, affecting some 180,000 internally displaced persons, 250,000 refugees, as well as the local population. The withdrawal of Chadian security forces from Dogdore precipitated a spate of thefts of non-governmental organization supplies in September 2008 and in February and March 2009. This resulted in the suspension of water, sanitation and health services for 28,000 internally displaced persons.

4. Motivations

45. Violence against humanitarian personnel and the theft of humanitarian assets can have either economic or political motivations. Understanding those motivations, as far as possible, and the affiliations of perpetrators is essential to developing appropriate responses.

46. Violence against humanitarian personnel may be perpetrated by parties to conflict in furtherance of their political aims. For example, it may be intended to deprive a civilian population of its means of subsistence in order to demoralize the enemy. Alternatively, such violence may be in response to a perceived connection between humanitarian organizations and national and international political actors that are, or are perceived to be, associated with the enemy. The above-mentioned Overseas Development Institute analysis identified an increase in explicitly politically motivated attacks, from 29 per cent of incidents in 2003 to 49 per cent in 2008. Consistent with this finding, a non-governmental organization which analyses aid worker insecurity in Afghanistan found that 65 per cent of violent incidents in 2008 were attributed to non-State armed groups — a marked departure from 2007, when 61 per cent of incidents were attributed to criminal actors.

47. In a number of situations, the risks faced by humanitarian workers are further heightened by the negative, even overtly hostile, attitudes of Government officials and other prominent individuals towards humanitarian organizations which are often portrayed through the national media. In Somalia, Sri Lanka and the Sudan, this has contributed to an overall threatening atmosphere and has increased the difficulty of negotiating access. In some cases, senior Government officials have publicly condemned humanitarian agencies for engaging in improper conduct, including accusations of active support for a party to the conflict.

48. The theft of assets is often economically motivated and tends to be enabled by weaknesses in chains of command and fuelled by the fragmentation and proliferation of armed groups in the wake of ceasefire or peace agreements, and the incomplete or delayed reintegration and rehabilitation of ex-combatants. Such threats may be mitigated through increased efforts to address these specific problems and other conditions which may give rise to security vacuums and an increase in criminality.

49. In some contexts, parties to conflict and criminal groups may collaborate in the pursuit of both economically and politically motivated attacks on humanitarian agencies. This is particularly pronounced in Afghanistan and Somalia. In the case of Somalia, for example, criminal actors have been known to sell abductees to political actors.

III. Addressing access constraints

50. Humanitarian organizations face significant policy and operational dilemmas in overcoming access constraints and in ensuring that measures adopted to reach populations in urgent need are not detrimental to sustained access in the long run. While constraints must be addressed in a context-specific manner, there are examples of good practice on which to build.

51. Such basic measures as rebuilding roads and bridges, pre-positioning stocks and ensuring the availability of affordable air services can help establish more consistent access. Pooled management of vital assets by humanitarian agencies can assist in securing these assets from theft and ensuring their timely deployment. Where feasible and appropriate, and good alternatives are not available, peacekeeping assets may be able to provide backup logistics capacity to access areas which cannot otherwise be reached or to pre-position essential relief items within a tight time frame. Forward operating bases of peacekeeping missions may provide the opportunity for humanitarian actors to establish an initial presence in areas where humanitarian operations have not yet been established.

52. The simplification of administrative regulations to expedite the provision of assistance was the raison d'être of the above-mentioned Joint Communiqués of 2004 and 2007 between the Government of the Sudan and the United Nations. The Joint Communiqués established and reinforced a moratorium on all restrictions on humanitarian work in Darfur as well as "fast track" procedures for processing immigration and customs requirements. While this agreement initially improved the timeliness of bureaucratic processes and the deployment of humanitarian personnel and assets, as noted above, lapses in its implementation have emerged over time.

53. States should consider taking measures to facilitate the provision of humanitarian assistance, for example, through the adoption of domestic legislation that foresees expedited visa processing and customs clearance for relief personnel, goods and equipment; exemptions from taxes, duties and fees on relief activities; and simplified means for humanitarian organizations to acquire domestic legal personality in order to operate legally in the country. Guidance in this respect could be drawn from the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance".

54. Also in the context of the Sudan, reference should be made to the consistent advocacy efforts of United Nations actors, Security Council Member States and influential States in the region, undertaken in the wake of the expulsions of non-governmental organizations in March 2008. Such efforts helped foster an environment conducive to access negotiations which, in turn, resulted in steps taken by the Government to enable urgent relief activities as well as agreement for expanded coordination and monitoring mechanisms at the State, federal and international levels.

55. In terms of addressing threats to the safety of relief consignments, the provision of naval escorts by several Member States has played an important role in facilitating safe passage for humanitarian supplies in the face of continuing piracy off the Somali coast. By mid-2008, 27 ships carrying over 118,000 metric tons of food for approximately 1.2 million beneficiaries reached Somalia. However, such escorts need to be provided more consistently. The absence of a naval escort throughout August 2008 meant that WFP was able to deliver only 50 per cent of the food consignment for that month, affecting over 1 million people.

56. Also with regard to the safety and security of humanitarian workers and operations, although the European Union Force (EUFOR) in Chad was not originally conceived or structured to carry out policing functions, it adapted its operations to assist in preventing criminality against the humanitarian community, including through its patrols, securing key areas and supply routes, and establishing perimeters within which humanitarian actors could operate without direct accompaniment. It is envisaged that MINURCAT, which took over from EUFOR in March 2009, will continue these activities, though its deployment currently stands at less than 50 per cent of its mandated strength, relying in particular on the Détachement intégré de sécurité. Greater consideration could be given by the Security Council to the use of policing capacity to deter criminal activity in areas of humanitarian operations as well as in seeking to build domestic policing capacity.

57. In the case of the Democratic Republic of the Congo, the use of MONUC armed escorts, as required by United Nations security management procedures, has helped establish and maintain access to affected populations. However, with the recently increased direct involvement of MONUC in operations against armed groups, there is a risk that humanitarian agencies may be caught up in attacks against MONUC, or may experience difficulty in negotiating access with armed groups owing to the perception that their activities support political objectives.

58. Indeed, in particularly insecure environments, while the use of armed escorts can facilitate secure access to populations that would not otherwise be reached, if those providing such services are parties to conflict or otherwise actively engaged in hostilities, this may undermine the perception of neutrality and independence of humanitarian actors and reduce their acceptance on the part of all parties to the

conflict and among local populations. Approaches must be found to address security concerns in a way that does not impede humanitarian operations or put beneficiaries at further risk.

59. Systematic dialogue with all parties to conflict, including non-State armed groups, is imperative to establish understanding and acceptance of the neutral and impartial character of humanitarian assistance and the operational modalities of humanitarian agencies, and to sustain access in the long run. In addition, dialogue can be structured around negotiating context-specific arrangements, such as days of tranquillity to conduct immunization or other public health campaigns. In Afghanistan, for example, in 2007 and 2008, the United Nations Children's Fund and the World Health Organization obtained agreement from Afghan and international military forces and from armed opposition groups to undertake polio vaccinations on designated days of tranquillity. The modus operandi of these and similar initiatives should be developed and implemented as and where needed.

60. Similarly, de-conflicting arrangements, whereby communications channels between humanitarian actors and parties to conflict are established to coordinate the time and locations of relief activities, can help to ensure that military operations do not interfere with the delivery of humanitarian assistance. The creation of humanitarian corridors may also be appropriate in situations where security and respect for such corridors can be assured by all parties to conflict for as long as they are needed to provide humanitarian aid.

61. It is regrettable that, in some instances, humanitarian actors have been actively discouraged or expressly forbidden by the affected State from entering into dialogue with non-State groups. The need for, and importance of, such dialogue must be more widely understood by Member States.

IV. Considerations for the Security Council

62. While there are, as indicated, certain initiatives that must be pursued by humanitarian and other relevant actors to facilitate and improve access, the Security Council has an important role to play in promoting an environment that is conducive to the facilitation of humanitarian access to those in need. More specifically, as mentioned above, Council should:

(a) Consistently condemn and call for the immediate removal of impediments to humanitarian access that violate international humanitarian law;

(b) Call for strict compliance by parties to conflict and third States with their obligations to allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel, and encourage States to promote respect for humanitarian principles;

(c) Call upon parties to conflict to allow safe passage for civilians seeking to flee zones of fighting;

(d) Call upon parties to conflict to agree to the temporary suspension of hostilities and implement days of tranquillity in order to enable relief actions by humanitarian actors;

(e) Call upon parties to conflict to cooperate with humanitarian organizations in the establishment of de-conflicting arrangements in order to facilitate the delivery of assistance during hostilities;

(f) Call upon relevant parties to conclude and implement agreements to expedite the deployment of humanitarian personnel and assets. Negotiations could be assisted by the development of a standard moratorium on visa requirements, work and travel permits, and on customs duties and import restrictions on humanitarian goods and equipment;

(g) Mandate United Nations peacekeeping and other relevant missions, where appropriate and as requested, to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;

(h) Apply targeted measures against individuals obstructing access to, or the distribution of, humanitarian assistance;

(i) Refer grave and prolonged instances of the wilful impediment of relief supplies to the International Criminal Court.

63. In addition, as mentioned above, considering the frequency and gravity of attacks and other violations against humanitarian workers, the Security Council should:

(a) Consistently condemn and call for the immediate cessation of all acts of violence and other forms of harassment deliberately targeting humanitarian workers;

(b) Call for strict compliance by parties to conflict with international humanitarian law, including the duty to respect and protect relief personnel and installations, material, units and vehicles involved in humanitarian assistance;

(c) Call upon States affected by armed conflict to assist in creating conditions conducive to safe, timely and unimpeded humanitarian action;

(d) Call upon Member States that have not done so to ratify and implement the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol;

(e) Apply targeted measures against individuals responsible for attacks against humanitarian workers and assets;

(f) Refer grave instances of attacks against humanitarian workers to the International Criminal Court.